CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 547

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

vs.

JOSEPH S. MacLAUGHLIN, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF PENNSYLVANIA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

FILED DECEMBER 3, 1931

(36,361)

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1931

No. 4669

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Appellant,

vs.

JOSEPH S. MACLAUGHLIN, Collector of Internal Revenue for the First District of Pennsylvania, Appellee

On Appeal from the District Court of the United States for the Eastern District of Pennsylvania

Before Buffington, Woolley, and Davis, Circuit Judges

Certificate to the Supreme Court—Filed Nov. 3, 1931

The Circuit Court of Appeals for the Third Circuit, in order to be guided to a proper decision of this case, desires the instruction of the Supreme Court, and therefore, under authority of Section 239 of the Judicial Code, certifies a question of law arising from the following facts:

STATEMENT OF FACTS

The Insurance Company of the State of Pennsylvania, appellant, plaintiff below, is a stock fire and marine insurance company, incorporated under the laws of the Commonwealth of Pennsylvania.

Joseph S. MacLaughlin, appellee, defendant below, is the Collector of Internal Revenue for the First District of Pennsylvania.

The Revenue Act of 1913 and the subsequent Acts of 1916, 1917 and 1918 taxed all insurance companies in the same manner as corporations generally. Under these Acts gain which accrued subsequent to March 1, 1913 and was realized during the taxable year from the sale or other disposition of property was taxable as income. Under the Revenue Act of 1921, however, gain by insurance companies (other [fol. 2] than mutual) from the sale or other disposition of property was no longer subject to tax nor were such com-

panies permitted to deduct losses sustained in like manner. The Revenue Acts of 1924 and 1926 re-enacted substantially the provisions of the Act of 1921 in this respect. Thus from January 1, 1921 until January 1, 1928 insurance companies (other than mutual) were not subject to income tax upon gain derived from the sale or other disposition of property.

The Revenue Act of 1928, approved May 29, 1928, became effective as of January 1, 1928 as to all except certain specific provisions not here pertinent, which became effective on the date of its approval.

Section 13 of that Act imposes a tax of 12% upon the net income of corporations generally. Supplement G, which is composed of sections 201 to 208 inclusive, dealing with insurance companies, provides by Section 204 (26 U. S. C. A. Sec. 2204) as follows:

"(a) In lieu of the tax imposed by Section 13 of this Title, there shall be levied, collected, and paid for each taxable year upon the net income of every insurance company (other than a life or mutual insurance company) a tax as follows:

(1) In the case of such a domestic insurance company 12% of its net income; * * *

(b) Definition of income, etc. In the case of an insurance company subject to the tax imposed by this section—

(1) Gross Income.—'Gross Income' means the sum of (A) * * *, and (B) gain during the taxable year from the sale or other disposition of property.

* * * * * * *

(c) Deductions Allowed.—In computing the net income of an insurance company subject to the tax imposed by this section there shall be allowed as deductions:

* * * * * * *

[fol. 3] (5) Losses sustained during the taxable year from the sale or other disposition of property; * * *"

The foregoing clauses, (b) (1) Clause (B) and (c) (5), which provide for the inclusion in the definition of 'Gross Income' of "gain during the taxable year from the sale or

other disposition of property" and that "losses sustained during the taxable year from the sale or other disposition of property" shall be allowed as deductions in computing the net income of such insurance companies, are new.

The Insurance Company of the State of Pennsylvania, appellant, realized gain during the taxable year from the sale or other disposition of property. Appellee assessed and collected a tax thereon from appellant in the sum of $20,933.46 with interest of $885.89, a total of $21,819.35. Such tax was computed upon the theory that the basis to be used in computing gain or loss resulting from the sale or other disposition of property by insurance companies (other than life or mutual insurance companies) on or after January 1, 1928, as applied to property owned on that date, under the provisions of section 204 of the Revenue Act of 1928 is the cost, the fair market value as of March 1, 1913 or other basis as provided by section 113 of the said Act.

On August 15, 1930 appellant filed with appellee its Claim for Refund of the said tax with interest so assessed in the sum of $21,819.35. Appellant's Claim for Refund of said tax was disallowed by the Commissioner of Internal Revenue on October 10, 1930. Appellant subsequently instituted the present suit against appellee to recover said sum of $21,819.35 with interest thereon from the dates upon which the same had been paid.

Appellee filed an Affidavit of Defense raising only questions of law in accordance with the Pennsylvania Practice Act of 1915. The District Court of the United States for the Eastern District of Pennsylvania (Kirkpatrick, J.) held that under the provisions of section 204 of the Revenue Act of 1928 the basis to be used in computing gain from the sale or other disposition of property owned on January 1, 1928 by insurance companies (other than life or mutual insurance companies) is the fair market value as of January 1, [fol. 4] 1928, the effective date of the Act, and not the fair market value as of March 1, 1913 or other basis as provided by section 113 of the Act. The District Court accordingly held that as so construed the above provisions of section 204 of the Revenue Act of 1928 are constitutional. The District Court held the affidavit of defense sufficient and entered judgment for appellee and against appellant.

Appellant subsequently perfected its appeal to the Circuit Court of Appeals for the Third Circuit.

The question of law growing out of the foregoing facts upon which the Circuit Court of Appeals desires instruction by the Supreme Court is this:

QUESTION CERTIFIED

If the basis to be used by an insurance company (other than a life or mutual insurance company) in computing "gain during the taxable year from the sale or other disposition of property", acquired before and disposed of after January 1, 1928, the effective date of the Revenue Act of 1928, be the fair market value of such property as of March 1, 1913 or other basis provided by section 113 of the Act, is the quoted provision (section 204 (b) (1), clause (B)) unconstitutional because it taxes capital?

Joseph Buffington, Circuit Judge. Victor B. Woolley, Circuit Judge. J. Warren Davis, Circuit Judge.

[File endorsement omitted.]

[fol. 5] Clerk's certificate to foregoing paper omitted in printing.

Endorsed on cover: File No. 36,361. U. S. Circuit Court of Appeals, Third Circuit. Term No. 547. The Insurance Company of the State of Pennsylvania vs. Joseph S. MacLaughlin, Collector of Internal Revenue for the First District of Pennsylvania. Certificate. Filed December 3, 1931. File No. 36,361.